

1 R. Joseph Trojan (CA Bar No. 137,067)
2 trojan@trojanlawoffices.com
3 TROJAN LAW OFFICES
4 9250 Wilshire Blvd., Suite 325
5 Beverly Hills, CA 90212
6 Telephone: 310-777-8399
7 Facsimile: 310-777-8348

8
9 **Attorneys for Plaintiff,**
10 **PHOENIX SOLUTIONS, INC.**

11 Daralyn J. Durie (CA Bar No. 169825)
12 Eugene M. Paige (CA Bar No. 202849)
13 Ryan M. Kent (CA Bar No. 220441)
14 Sandeep Mitra (CA Bar No. 244054)
15 KEKER & VAN NEST, LLP
16 710 Sansome Street
17 San Francisco, CA 94111-1704

18 **Attorneys for Defendant,**
19 **WELLS FARGO & COMPANY**

20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PHOENIX SOLUTIONS, INC, a
California corporation,

CASE NO. CV08-00863 MHP

Plaintiff,

**JOINT CASE MANAGEMENT STATEMENT
AND PROPOSED ORDER**

v.

WELLS FARGO AND COMPANY, a
Delaware corporation,

Hon. Marilyn Hall Patel

Defendant.

The parties submit their Joint Case Management Statement
pursuant to the Clerk's Notice (Docket Entry No. 17), Civil Local
Rule 16-9, and the "Standing Order for All Judges of the Northern

1 District of California - Contents of Joint Case Management
2 Statement."

3

4 **1. Jurisdiction and Service**

5 This Court has subject matter jurisdiction over Plaintiff
6 Phoenix Solutions Inc.'s ("Phoenix") patent infringement claims
7 pursuant to 28 U.S.C. § 1338(a).

8 No issues exist regarding personal jurisdiction or venue.
9 As further explained below, Phoenix intends to submit an amended
10 complaint naming Wells Fargo Bank, N.A. as the defendant, and
11 Keker & Van Nest LLP is authorized to accept service of that
12 amended complaint on behalf of Wells Fargo Bank, N.A.

13

14 **2. Facts**

15 On February 8, 2008, Phoenix brought an action for damages
16 and injunctive relief against Wells Fargo and Company ("Wells
17 Fargo") for alleged infringement of United States Patent No.
18 6,633,846, 6,665,640, 7,050,977 and 7,277,854 (collectively
19 "Patents in Suit").

20 Wells Fargo answered the Complaint on March 4, 2008, denying
21 infringement and asserting defenses of non-infringement and
22 invalidity. On March 24, 2008, Wells Fargo & Company filed an
23 amended answer to Phoenix's complaint, which added certain
24 defenses, including inequitable conduct.

25
26
27
28

1 The parties have stipulated that Phoenix will file an
2 amended complaint that names Wells Fargo Bank, N.A. as the
3 defendant in this action.

4 **3. Legal Issues**

5 Legal issues exist with respect to patent infringement,
6 patent validity, inequitable conduct in procurement of the
7 patents in suit, the existence and amount of Phoenix's alleged
8 damages, and whether Phoenix is entitled to injunctive relief.

9 **4. Motions**

10 On March 13, 2008, Wells Fargo filed an Administrative
11 Motion to Consider Whether Cases Should be Related pursuant to
12 Civil Local Rule 3-12. On March 26, 2008, Judge Honorable
13 Marilyn H. Patel found this case was related to Phoenix
14 Solutions, Inc. v. Sony Electronics, Inc. and issued a Related
15 Case Order (Docket Entry No. 16).

16 During the week of April 21, 2008, Phoenix will file an
17 amended complaint changing the named defendant from "Wells Fargo
18 and Company" to "Wells Fargo, N.A." Wells Fargo has stipulated
19 to the filing of that amended complaint.

20 Phoenix anticipates filing a motion to strike Wells Fargo's
21 affirmative defenses numbered thirty-five through thirty-eight.

22 Phoenix may need to file a motion for administrative relief
23 under Civil L.R. 7-11 to reschedule the Case Management
24 Conference currently scheduled for May 5, 2008. Mr. Trojan has
25
26
27

1 recently learned he will be lead counsel on a three-week jury
2 trial starting on May 5, 2008.

3 **5. Amendment of Pleadings**

4 At this time, aside from the substitution of Wells Fargo
5 Bank, N.A. for Wells Fargo & Company, no other parties are
6 expected to be added in this case.

7 The parties propose November 3, 2008, as the deadline for
8 amending the pleadings.

10 **6. Evidence Preservation**

11 The parties discussed the types of documents that each side
12 would expect the other to preserve for purposes of the litigation
13 during their meet-and-confer.

15 **7. Disclosures**

16 The parties agree to complete Rule 26(a) initial disclosures
17 by May 19, 2008.

19 **8. Discovery**

20 Discovery Taken to Date

21 No discovery has been taken to date.

23 Scope of Anticipated Discovery

24 The parties agree that bifurcating discovery into fact and
25 expert phases would be appropriate. Phoenix anticipates that
26 fact discovery will be needed concerning Wells Fargo's defenses,
27 including discovery on infringement of the Patents in Suit and

1 damages. Wells Fargo anticipates that fact discovery will center
2 upon the validity, enforceability, and infringement of the
3 Patents in Suit. Expert discovery will likely be needed on these
4 issues as well.

Proposed Limitations or Modifications of the Discovery Rules

The parties discussed the manner in which electronically stored information will be produced. Phoenix anticipates producing its electronically stored information in a standard format. Wells Fargo anticipates producing its electronically stored information as single page tiff files.

Phoenix proposes that no modifications be made to the Federal Rules of Civil Procedure. Wells Fargo proposes only a single modification to the defaults contained in the Federal Rules: it proposes permitting as much as fourteen (14) hours of deposition time for each inventor, instead of the presumptive seven (7) limitation found in Rule 30(d)(1). Wells Fargo believes this increase in the standard deposition time is necessary given that three of the inventors are named on three of the Patents in Suit and the fourth is named on all four of the Patents in Suit.

23 Phoenix objects to the seven-hour limit being exceeded for
24 any of the inventors.

26 Wells Fargo anticipates that it may be necessary to use the
27 provisions of the Hague Convention in order to obtain the
28 depositions of three of the four named inventors, each of whom

1 appear to be Indian nationals. Wells Fargo has inquired whether
2 Phoenix will agree to make those inventors available for
3 deposition, and Phoenix has indicated that it needs to
4 investigate the matter further.

5 Wells Fargo believes that an appropriate and mutually
6 acceptable protective order should be in place before it can
7 produce its documents, and is prepared to negotiate the terms of
8 such an order with Phoenix.

9 Patent Local Rules Deadlines

10 By June 2, 2008, Phoenix will serve its Preliminary
11 Infringement Contentions for the Patents in Suit pursuant to
12 Patent Local Rule 3-1. By July 31, 2008, Wells Fargo will serve
13 its Preliminary Invalidity Contentions. These dates are
14 calculated under the Patent Local Rules from the May 5, 2008
15 Initial Case Management Conference date, with two extra weeks for
16 the preparation of contentions included for each side. The
17 parties jointly propose holding a technology tutorial for the
18 Court the week before the Markman hearing in this case. The
19 parties are willing to present live testimony at either the
20 technology tutorial or the Markman hearing, should the Court
21 believe that such testimony would be useful.

22 Proposed Discovery/Case Management Plan

23 Each party proposes the following schedule:

24 //

25 //

Event	Phoenix's Proposed Dates	Wells Fargo's Proposed Dates	Court Ordered Dates
Initial Case Management Conference	--	--	May 5, 2008
Phoenix's Preliminary Infringement	June 2, 2008	June 2, 2008	--
Defendant's Preliminary Invalidity	July 31, 2008	July 31, 2008	
Exchange of Proposed Terms and Claim Elements	August 8, 2008	August 8, 2008	
Exchange of Preliminary Claim Construction	August 28, 2008	August 28, 2008	
File Joint Claim Construction and Prehearing Statement	September 19, 2008	September 19, 2008	
Claim Construction Discovery (including expert claim construction discovery) cut-off	October 19, 2008	October 19, 2008	
Phoenix Claim Construction Opening Brief	October 30, 2008	October 30, 2008	
Response Brief to Phoenix Opening Brief	November 13, 2008	November 13, 2008	
Reply to Response Brief	November 20, 2008	November 20, 2008	
Completion of Claim Construction Hearing	Week of Dec. 1 for Tutorial Week of Dec. 8 for Markman	Week of Dec.1 for Tutorial Week of Dec.8 for Markman	

	Hearing	Hearing	
Fact Discovery cut-off	January 9, 2009	February 20, 2009	
Opening Expert Reports on topics for which a party bears the burden of proof	January 16, 2009	March 23, 2009	
Rebuttal Expert Reports	January 30, 2009	April 20, 2009	
Expert Discovery cut-off	February 20, 2009	May 18, 2009	
Discovery Motion cut-off	February 27, 2009	May 4, 2009	
Filing of Dispositive Motion cut-off	March 6, 2009	June 15, 2009	
<ul style="list-style-type: none"> • Joint Final Pretrial Statement and Proposed Order • Jury Instructions, <i>voir dire</i>, verdict form • Depo. Designations 	April 27, 2009	August 21, 2009	
Pretrial Conference	May 11, 2009	September 7, 2009	
Jury Trial	May 25, 2009	September 21, 2009	

9. **Class Action**

This case is not a class action.

10. **Related Cases**

This Court has determined Phoenix Solutions, Inc. v. Sony Electronics, Inc., Case No. CV 07-02112 MHP, is a related case.

1 Phoenix continues its contention that the two cases are not
2 related.

3 Phoenix currently has a proceeding pending before the United
4 States District Court for the Central District of California.
5 That case is titled Phoenix Solutions, Inc. v. The DirecTV Group,
6 Inc., Case No. CV 08-984 MRP(SSx). It is a patent infringement
7 lawsuit, and Phoenix has asserted one of the four Patents in Suit
8 against DirecTV in that action.

10 **11. Relief**

11 Phoenix seeks compensatory damages of twenty-five (25) to
12 thirty-three (33) percent of the money it alleges Wells Fargo has
13 saved by using the Patents in Suit. Further, Phoenix seeks a
14 preliminary and permanent injunction barring Wells Fargo from
15 manufacturing, importing, or using any system that infringes the
16 Patents in Suit. Furthermore, Phoenix also seeks an accounting,
17 compensatory damages not less than a reasonable royalty, a
18 compulsory license fee in the event that a permanent injunction
19 is not issued, treble damages, attorneys' fees, and any and all
20 other relief that the Court deems proper.

21 **12. Settlement and ADR**

22 The Joint ADR Certification with Stipulation to ADR Process
23 will be filed with the Court during the week of April 21, 2008.
24 The parties have agreed to participate in mediation pursuant to
25 ADR L.R. 6. Phoenix believes that it cannot have meaningful
26
27

1 settlement discussions until data concerning Wells Fargo's call
2 volume is provided.

3 **13. Consent to Magistrate Judge for All Purposes**

4 Phoenix declined to consent to the assignment of the case to
5 Magistrate Judge Chen, resulting in the case being transferred
6 for all purposes to Judge Armstrong.
7

8 Phoenix may consent to a magistrate judge if the parties are
9 allowed to select the judge. Wells Fargo does not believe that
10 Phoenix may now consent to proceed before a magistrate judge,
11 having previously declined to have this case heard by Magistrate
12 Judge Chen.
13

14 **14. Other References**

15 The parties do not feel that the case is suitable for
16 reference at this time to binding arbitration, a special master,
17 or the Judicial Panel on Multidistrict Litigation.
18

19 **15. Narrowing of Issues**

20 Phoenix and Wells Fargo do not believe the issues can be
narrowed at this time.
21

22 **16. Expedited Schedule**

23 This case is not likely a case that can be handled on an
expedited basis with streamlined procedures.
24

25 **17. Scheduling**

26 See Proposed Discovery/Case Management Plan, *supra*, at
27 section 8.
28

1 **18. Trial**

2 The parties estimate a 2-week jury trial.

3 **19. Disclosure of Non-party Interested Entities or Persons**

4 All of the parties have filed the "Certification of
5 Interested Entities or Persons" as required by Civil Local Rule
6 3-16. (Docket Entry Nos. 2, 13).

7 Phoenix has identified Dr. Ian Bennett, inventor of Patents
8 in Suit, as an interested person as defined under L.R. 3-16.

9 Wells Fargo has stated no such entities or persons exist as
10 to Wells Fargo.

11 **20. Other Matters**

12 At this time, there are no other matters as may facilitate
13 the just, speedy and inexpensive disposition of this matter.

1 Respectfully submitted,

2 TROJAN LAW OFFICES
3 by

4
5 /s/R. Joseph Trojan

6 R. Joseph Trojan
7

8 Attorney for Plaintiff,
9 PHOENIX SOLUTIONS, INC.

10
11 KEKER & VAN NEST, LLP
12 by

13
14 /s/Eugene M. Paige

15 Daralyn J. Durie
16 Eugene M. Paige
17 Ryan M. Kent
18 Sandeep Mitra

19 Attorney for Defendant,
20 WELL'S FARGO AND COMPANY

21 I hereby attest that I have on file all holograph signatures
22 for any signatures indicated by a "conformed" signature (/s/)
23 within this efiled document.

24
25 /s/R. Joseph Trojan

26 R. Joseph Trojan
27

28 Attorney for Plaintiff,
PHOENIX SOLUTIONS, INC.

1 **CASE MANAGEMENT ORDER**

2 The Case Management Statement and Proposed Order are hereby
3 adopted by the Court as the Case Management Order for the case
4 and the parties are ordered to comply with this Order.

5
6
7
8 Date: _____

9
10 _____
11 UNITED STATES DISTRICT JUDGE
12 Hon. Marilyn Hall Patel
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TROJAN LAW OFFICES
BEVERLY HILLS